

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DARYL BLAINE SMITH,

Plaintiff,

v.

Civil Action No. **3:23CV840**

SUSSEX I STATE PRISON, *et al.*,

Defendants.

MEMORANDUM OPINION

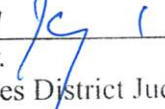
By Memorandum Order entered on March 12, 2024, the Court directed Plaintiff to pay an initial partial filing fee of \$141.00 or to state under penalty of perjury that he does not have sufficient assets to pay such a fee. *See* 28 U.S.C. § 1915(b)(1).¹ Plaintiff responded, and again attempted to negotiate his own payment plan. (ECF No. 190, at 1.) By Memorandum Order entered on April 19, 2024, the Court explained that Plaintiff is not permitted to create his own payment plan. Accordingly, the Court directed that, within thirty (30) days of the date of entry thereof, Plaintiff must submit an initial partial filing fee of **\$141.00** or state under penalty of perjury that he does not have sufficient assets to pay such a fee. The Court instructed that the failure to comply with this directive would result in the dismissal of the action without prejudice.

¹ On the consent to collection of fees form Plaintiff wrote, “20% of what I work for o.k.,” as an initial partial filing fee. (ECF No. 7, at 1.) In the March 12, 2024 Memorandum Order the Court explained to Plaintiff that he does not get to create his own terms for his payment of the fee. (ECF No. 9, at 1 n.1). The Court explained that it must charge the greater of 20% of the average monthly deposits for the prior six months, or 20% of Plaintiff’s average monthly balance for that same period. In this case, Plaintiff’s average monthly balance is the greater number.

More than thirty (30) days have elapsed, and Plaintiff has neither paid the initial partial filing fee nor averred that he cannot pay such a fee. Therefore, Plaintiff is not entitled to proceed *in forma pauperis*. Plaintiff's disregard of the Court's directives warrants dismissal of the action. Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall issue.

Date: 28 May 2024
Richmond, Virginia

/s/ 
John A. Gibney, Jr.
Senior United States District Judge